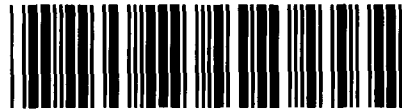


Control Number: 49380



Item Number: 38

Addendum StartPage: 0

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FILING CLERK

APPLICATION OF NERRO SUPPLY, §
LLC AND UNDINE TEXAS, LLC FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN BRAZOS, BURLESON, §
CHAMBERS, MONTGOMERY, §
ROBERTSON, AND WALKER §
COUNTIES, AMENDMENT TO §
UNDINE TEXAS, LLC'S WATER §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY, AND §
DECERTIFICATION OF A PORTION §
OF NERRO SUPPLY, LLC'S §
CERTIFICATED AREA IN §
BURLESON COUNTY §

OF TEXAS

JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED

COME NOW, Undine Texas, LLC (Undine) and Nerro Supply, LLC (Nerro) (collectively, the Applicants), together with the staff of the Public Utility Commission of Texas (Commission Staff) (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Order Approving Sale/Transfer to Proceed. In support thereof, the Parties show the following:

I.

BACKGROUND

On March 27, 2019, Applicants filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger of facilities and certificate rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker Counties, amendment to Undine's water certificate of convenience and necessity (CCN), and decertification of a portion of Nerro's certificated area in Burleson County.

On June 4, 2019, Undine provided responses to Staff's first request for information.

On June 10, 2019, Undine provided proof of notice and supporting documentation.

On July 18, 2019, Undine provided responses to Staff's second request for information.

On August 9, 2019, Undine filed its First Supplement to Application indicating that the transaction will also require that an uncertificated area be added to Undine's CCN.

On October 4, 2019, Undine filed its Second Supplement to Application noting that the uncertified area Applicants are seeking to certify as part of the application is currently being served by Nerro with adequate existing capacity and no additional construction will be necessary to serve that area.

On October 8, 2019, the Administrative Law Judge issued Order No. 6 Amending Procedural Schedule requiring the Parties to submit a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed and directing the Parties to file an agreed notice of approval by October 28, 2019. Therefore, this pleading is timely filed.

II.

JOINT MOTION TO ADMIT EVIDENCE

The Parties move to admit the following evidence into the record of this proceeding:

- (1) The Application, filed on March 27, 2019 (AIS Item No. 1);
- (2) Applicants' supplement to the Application, filed on April 2, 2019 (AIS Item No. 9);
- (3) Undine's supplement to the Application, filed on April 23, 2019 (AIS Item No. 10);
- (4) Undine's responses to Staff's first request for information, filed on June 4, 2019 (AIS Item Nos. 15-18);
- (5) Undine's proof of notice and supporting documentation, filed on June 10, 2019 (AIS Item No. 20-21);
- (6) Undine's supplement to its proof of notice, filed on June 19, 2019 (AIS Item No. 23);
- (7) Undine's responses to Staff's second request for information, filed on July 18, 2019 (AIS Item Nos. 26-27);
- (8) Undine's First Supplement to Application, filed on August 9, 2019 (AIS Item No. 29);
- (9) Undine's Second Supplement to Application, filed on October 4, 2019 (AIS Item No. 33);
and
- (10) Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto, filed October 4, 2019 (AIS Item No. 34).

III.

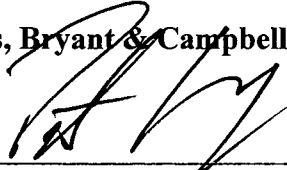
CONCLUSION

The Parties respectfully request that the Commission authorize the proposed transaction to proceed.

Respectfully submitted,

DuBois, Bryant & Campbell, LLP

By: _____

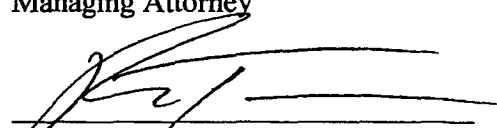

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Managing Attorney

A handwritten signature in black ink, appearing to read 'Rustin Tawater', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify by my signature above, that a copy of this document will be served on all parties of record on the ~~28~~²⁴ of October 2019, in accordance with 16 TAC § 22.74.

DOCKET NO. 49380

APPLICATION OF NERRO SUPPLY, LLC AND UNDINE TEXAS, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BRAZOS, BURLESON, CHAMBERS, MONTGOMERY, ROBERTSON, AND WALKER COUNTIES, AMENDMENT TO UNDINE TEXAS, LLC'S WATER CERTIFICATE OF CONVENIENCE AND NECESSITY, AND DECERTIFICATION OF A PORTION OF NERRO SUPPLY, LLC'S CERTIFICATED AREA IN BURLESON COUNTY	§ § § § § § § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**JOINT PROPOSED ORDER
APPROVING SALE/TRANSFER TO PROCEED**

This Order addresses the March 27, 2019 application of Nerro Supply, LLC (Nerro) and Undine Texas, LLC (Undine) (collectively, the Applicants), for sale, transfer, or merger of facilities and certificate rights in Brazos, Burleson, Chambers, Montgomery, Robertson, and Walker Counties, amendment to Undine's water certificate of convenience and necessity (CCN), and decertification of a portion of Nerro's certificated area in Burleson County. Specifically, Undine seeks approval to acquire facilities and to transfer water service area from Nerro under water CCN 12252, to decertify a portion of Deanville Water Supply Corporation (Deanville WSC) CCN No. 10177, and to amend uncertificated water service area into its CCN boundaries.

On October 4, 2019, Commission Staff recommended that the transaction proceed in this docket.

The Administrative Law Judge grants that the transaction proposed in this Application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Nerro Supply, LLC is a for-profit corporation registered with the Texas secretary of state under file number 801380548 that provides water service in Texas under CCN No. 12252
2. Undine Texas, LLC is a for-profit corporation registered with the Texas secretary of state under file number 802339329 that provides water service in Texas under CCN No. 13260.
3. Nerro Supply, LLC owns twenty-two public water systems (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under the following PWS numbers:

Nerro Utility Name	PWSID
Allendale Water System	1700187
Apache Hills	260019
Bayridge Subdivision Water System	360028
Benchley Oaks Subdivision	210039
Hillgreen Subdivision Water Co.	1700539
Lakeview N Marshall Oaks Somerville Place	260010
Lakewood Estates	210042
Little Oak Forest Subdivision	260037
Loch Ness Cove Subdivision Water System	1700148
Lost Lakes	360108
Oak Forest Lakeway Manor	1980017
Oaks at Houston Point	360126
River Club Water	1700185
Smetana Forest	210010
Somerville Place	260021
Whispering Woods	260032
Wildwood Shores	2360078
Woodhaven Estates	1700481
Maple Leaf Mobile Home Subdivision	1011493
Oakland Village Mobile Home Community	1011049
Riverwood Estates	1460146
Woodland Acres Subdivision	360027

4. Undine Texas, LLC owns sixty-three PWS registered with the TCEQ under the following PWS numbers:

Undine Utility Name	PWSID
Angle Acres	200244
Bayou Colony	0200358
Bear Creek	0200359

Beaumont Place	0200360
Beechwood	0200361
Bell Manor	0200362
Bernard Oaks	0200363
Blue Sage Gardens	0200364
Brandi Estates	0200365
Brazos Oaks	0200366
Briar Meadows	0200410
Buffalo Creek	1260084
Castlewood	1010111
College Port	1610132
Colony Cove	0200324
Colony Trails	0200604
Coronado Country	0200275
Country Acres	0200274
Country Meadows	0200273
Crowley II Acres	1260012
Crystal Lake	0790510
Cypress Bend	1010119
Demi John Island	0200234
Demi John Place	0200185
Greengate Acres	1010132
Highland Mobile Home Sub	1010285
Highland Ridge	1010157
Huffman Heights	1010700
John Dame	1260090
Joy Village	1700021
Kucera Farms	0200665
Lakewood Colony	1700029
Larkspur	0200339
Lee Ridge	0200506
Mark V	0200432
Martin Creek	1260122
Meadowlake Estates	1010287
Mooreland	0200094
Peach Creek Oaks	1700051
Pioneer Trails	1700114
Porter Terrace	1700161
Reservoir Acres	1010197
River Ranch/723	0790425
Riverside Estates	0200058
Rock Creek Estates	1260082
Rosharon Road	0200346

Ryan Long 2	0200108
San Bernard	0200460
Sanders View	1260086
Sandy Meadow	0200335
Snug Harbor	0200053
Southwood	0200403
Spanish Bit	1610102
Spring Crossing	0200666
Spring Forest	1700033
Springmont	1010255
Sweetgum Forest	1700113
Tall Cedars	1010219
Tejas Lakes	0790504
Urban Acres	1010252
Village Lakes	0200638
Wilco	0200083
Wolf Glen	0200370

Application

5. On March 27, 2019, Nerro and Undine filed an application for the approval of the sale, transfer or merger of facilities and certificate rights in Brazos, Burleson, Chambers, Montgomery, Robertson and Walker counties, decertification of a portion of Nerro’s certificated area, and addition of a portion of uncertificated water service area to Undine’s CCN boundaries.
6. Undine seeks approval to acquire facilities and to transfer water service area from Nerro under water CCN No. 12252, to decertify a portion of Deanville Water Supply Corporation CCN No. 10177, and to amend uncertificated water service area into its CCN boundaries.
7. The requested area includes the following subdivisions:
Allendale, Apache Hills, Bayridge, Benchley Oaks, Hillgreen, Lakeview N Marshall Oaks, Lakewood Estates, Little Oak Forest, Loch Ness Cove, Lost Lakes, Oaks at Houston Point, Oak Forest Lakeway, River Club, Smetana Forest, Somerville Place, Whispering Woods, Wildwood Shores/Sam Houston Forest, and Woodhaven Estates Subdivision.

Allendale Water System

The requested area is located approximately 6 miles east-northeast of downtown Shenandoah, Texas, and is generally bounded on the north by SH 242; on the east by Big Buck Pond; on the south by Greenbough Street; and on the west by FM 1314. The requested area includes approximately 89 total acres and 50 current customers.

Apache Hills

The requested area is located approximately 3 miles west-northwest of downtown Somerville, Texas, and is generally bounded on the north by CR 460; on the east by Lakeview Drive; on the south by Somerville Lake; and on the west by Yegua Creek. The requested area includes approximately 92 total acres and 67 current customers.

Benchley Oaks Subdivision & Lakewood Estates

The requested area is located approximately 6 miles northwest of downtown Bryan, Texas, and is generally bounded on the north by SH OSR & Redbud Drive; on the east by Redbud Drive; on the south by Mumford Road; and on the west by SH OSR. The requested area includes approximately 244 total acres and 241 current customers.

Hillgreen Subdivision Water Co.

The requested area is located approximately 4 miles northeast of downtown Conroe, Texas, and is generally bounded on the north by a line approx. 1000' north of Hillgreen Drive; on the east by Jeffcote Road; on the south by a line approx. 600' south of Hillgreen Drive; and on the west by West Fork Crystal Creek. The requested area includes approximately 59 total acres and 46 current customers.

Lakeview N Marshall Oaks & Somerville Place

The requested area is located approximately 4 miles west of downtown Somerville, Texas, and is generally bounded on the north by Big Creek; on the east by Recreational Road 4; on the south by CR 416; and on the west by Lakeview Drive. The requested area includes approximately 539* total acres and 220 current customers.

*277 acres already certificated, 262 acres to be newly certificated.

Little Oak Forest Subdivision

The requested area is located approximately 8 miles west of downtown Somerville, Texas, and is generally bounded on the north by Birch Creek; on the east by Birch Creek; on the south by Giebel Lane; and on the west by Park Road 57. The requested area includes approximately 203 total acres and 36 current customers.

Loch Ness Cove Subdivision Water System

The requested area is located approximately 7 miles northwest of downtown Willis, Texas, and is generally bounded on the north by Lake Paula Drive; on the east by Lake Conroe and Lake Paula; on the south by Coughatta; and on the west by Lake Conroe. The requested area includes approximately 66* total acres and 80 current customers.

*46 acres already certificated, 20 acres to be newly certificated.

Lost Lakes

The requested area is located approximately 2 miles southeast of downtown Old River Winfree, Texas, and is generally bounded on the north by Old River; on the east by Old River; on the south by River Oaks Drive; and on the west by FM 565. The requested area includes approximately 49 total acres and 47 current customers.

Oaks at Houston Point & Bayridge Water System

The requested area is located approximately 6 miles southwest of downtown Baytown, Texas, and is generally bounded on the north by Tri City Beach Road; on the east by Jordan Drive; on the south by Trinity Bay; and on the west by Cedar Point Road. The requested area includes approximately 143 total acres and 116 current customers.

Oak Forest Lakeway Manor

The requested area is located approximately 10 miles northwest of downtown Bryan, Texas, and is generally bounded on the north by Noble Oaks Lane; on the east by Anyway Drive; on the south by Lakeway Drive; and on the west by US 190. The requested area includes approximately 86 total acres and 49 current customers.

River Club Water

The requested area is located approximately 4 miles north of downtown Humble, Texas, and is generally bounded on the north by a line approx. 170' north of Russell Drive; on the east by Sorters McLellan Road; on the south by a line approx. 400' south of Lake Drive; and on the west by West Fork San Jacinto River. The requested area includes approximately 153 total acres and 75 current customers.

Smetana Forest

The requested area is located approximately 6 miles west of downtown Bryan, Texas, and is generally bounded on the north by Smetana Road; on the east by Smetana Road; on the south by Nonie Drive; and on the west by Luza Lane. The requested area includes approximately 70 total acres and 50 current customers.

Whispering Woods

The requested area is located approximately 7 miles northwest of downtown Somerville, Texas, and is generally bounded on the north by CR 410; on the east by CR 410; on the south by FM 60; and on the west by CR 405. The requested area includes approximately 190* total acres and 15 current customers.

*85 acres to be decertified, 98 acres to be newly certificated (including 31 acres previously certificated to Deanville WSC), 106 total acres to ultimately be certificated to Undine Texas LLC.

Wildwood Shores

The requested area is located approximately 8 miles west of downtown New Waverly, Texas, and is generally bounded on the north by Pipken Road; on the east by Forest Service Road 222; on the south by Lake Conroe; and on the west by Lake Conroe. The requested area includes approximately 276 total acres and 173 current customers.

Woodhaven Estates

The requested area is located approximately 5 miles west of downtown Conroe, Texas, and is generally bounded on the north by Woodhaven; on the east by Elizabeth Ridge; on the

south by FM 2854; and on the west by Old TX 105 West. The requested area includes approximately 44* total acres and 56 current customers.

*25 acres already certificated, 19 acres to be newly certificated.

8. The requested area includes approximately 2,218 acres and 1,321 connections.
9. In Order No. 2, issued on April 30, 2019, the Administrative Law Judge (“ALJ”) deemed the Application administratively complete.

Notice

10. On June 10, 2019, Carey A. Thomas, Senior Vice President and Secretary filed an affidavit on behalf of Undine, attesting that notice was provided to all Current Customers, Neighboring Utilities, and Affected Parties on June 5, 2019.
11. In Order No. 3, issued on June 21, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

12. On October 28, 2019, the parties jointly moved to admit evidence.
13. In Order No. __, issued on _____, 2019 the ALJ admitted the following evidence into the record: (a) the Application, filed on March 27, 2019 (b) Undine’s responses to Staff’s first request for information, filed on June 4, 2019; (c) Undine’s proof of notice and supporting documentation, filed on June 10, 2019; (d) Undine’s responses to Staff’s second request for information, filed on July 18, 2019 (e) Undine’s First Supplement to Application, filed on August 9, 2019; (f) Undine’s Second Supplement to Application, filed on October 4, 2019; and (g) Commission Staff’s recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto, filed October 4, 2019.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

14. Applicants have not been subject to any unresolved enforcement action by the TCEQ.

Adequacy of Existing Service—TWC § 13.301(c)(1); 16 TAC §§ 24.227(d)(1), (j)(5)(B)

15. Nerro owns and operates twenty-two public water systems to be sold in this transaction that currently provide continuous and adequate service to its customers and does not have any unresolved violations from the TCEQ.

Need for Additional Service—TWC §13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)

16. There are 1,321 existing connections in the areas to be transferred and the uncertificated areas, therefore there is a need for service.
17. Undine has adequate financial, technical, and managerial capabilities to provide service in case there comes a need for additional service.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

18. A portion of Deanville WSC, CCN No. 10177, is to be decertified, in accordance with the agreement filed in this docket.
19. The requested areas to be transferred and the uncertificated area are currently being served by 18 existing public water systems.
20. There is no effect on any other retail public utility of the same kind already servicing the proximate area.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

21. Undine has a sufficient number of licensed operators and the managerial and technical capability to provide adequate and continuous service to the requested service area.
22. Nerro and Undine have sufficient capability to serve the customers and no additional construction is necessary.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.23(g), (j)(5)(G)

23. Undine meets the leverage test with an effective debt service coverage ratio greater than 1.25.
24. Undine has demonstrated that it has the available cash levels to serve the requested service area.
25. Undine has demonstrated the financial capability and stability to provide continuous and adequate water service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)

26. Nerro is currently serving the existing customers with 18 existing public water system registered with the TCEQ and has sufficient capacity.

27. Utilities within a two-mile radius were noticed and no protests or requests to opt out were received regarding the proposed transaction.

28. The feasibility of an adjacent utility providing service to the requested area was not considered because the existing facilities possess sufficient capacity.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)

29. Undine meets the leverage test with an effective debt service coverage ratio greater than 1.25

30. Undine’s projected operating revenues are sufficient to cover the projected operations and maintenance expenses for the first five years after the completion of the proposed sale and transfer.

31. There is no need to require Undine to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)

32. The proposed transaction will not adversely impact the environmental integrity of the land because the requested area is currently receiving service.

Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

33. The effect on the land should be minimal as the requested area will continue to be served by existing systems and facilities and no additional construction is needed.

Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)

34. The proposed transaction will continue to provide the same level of water service as has already been provided to the existing customers in the area.

35. Rates will not change as a result of the approval of this Application.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Undine has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area. TWC § 13.301(b).

3. Nerro and Undine have demonstrated that the transferring a portion of Nerro’s water CCN No. 1225 to Undine, amending Undine’s water CCN No. 13260, decertifying a portion of Deanville WSC CCN No. 10177, and amending uncertificated water service area into Undine’s CCN boundaries will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

III. Ordering Paragraphs

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between Undine and Nerro may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the Undine and Nerro shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. Undine and Nerro have 180 days to complete the transaction.
4. Under 16 Texas Administrative Code § 24.109(o), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and Undine and Nerro will have to reapply for approval.
5. Undine and Nerro are advised that the eighteen corresponding service areas under the PWSID Numbers listed below will remain under CCN No. 12252 and held by Nerro until the sale and transfer transaction is complete in accordance with Commission rules.

Nerro Utility Name	PWSID
Allendale Water System	1700187
Apache Hills	260019
Bayridge Subdivision Water System	360028
Benchley Oaks Subdivision	210039
Hillgreen Subdivision Water Co.	1700539
Lakeview N Marshall Oaks Somerville Place	260010
Lakewood Estates	210042
Little Oak Forest Subdivision	260037
Loch Ness Cove Subdivision Water System	1700148
Lost Lakes	360108
Oak Forest Lakeway Manor	1980017
Oaks at Houston Point	360126
River Club Water	1700185

Smetana Forest	210010
Somerville Place	260021
Whispering Woods	260032
Wildwood Shores	2360078
Woodhaven Estates	1700481

6. In an effort to finalize this proceeding as soon as possible, Undine and Nerro shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the Undine's and Nerro's proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the _____ day of _____ 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE